IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 492 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant
Versus
KAKAD NILESH NATVERLAL & 6 - Respondents

==========

Appearance :
Mr. M.A. PATEL, LD. APP for Appellant:
MR YOGESH S LAKHANI for Respondent : 1,
MR TS NANAVATI for Respondents : 2 - 4,6 - 7.
Respondent No.5 died during trial:

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 18/12/2006

ORAL JUDGMENT:

1. The Appellant, State of Gujarat has preferred this appeal under Section 378 of Criminal

Procedure Code, 1973 (herein after referred to as the 'Code' for brevity), challenging the judgment & order of acquittal dated 13/1/1993 in Criminal Case No. 66 of 1983 passed by learned Chief Judicial Magistrate, Bhavnagar, acquitting the present respondents of the charge of commission of offence under section 408, 406, 467, 477A read with Section 114 of Indian Penal Code. This Court vide order dated 30/12/1993 (Coram: R.D. Vyas, J) granted leave and admitted the appeal. Same is taken up for hearing today.

2. The case of the appellant deserve to be set out briefly as under:

3.1 The Octroi Inspector of Bhavnagar Municipality Shri. Himmatbhai Maganlal Joshi, under the instructions of the Chief Officer Shri. Ghanshyambhai T. Karadiya, lodged the complaint with Police Inspector, 'A' Division, Bhavnagar on 20/6/1981 that the accused no.1 himself or in collusion with others got printed the octroi receipts of Bhavnagar Municipality, and used fake rubber stamps, appropriated the amount of octroi and caused damage to Bhavnagar Municipality and thereby cheated the Municipality. The complainant said that on 25/5/1981 the receipt No. 13655 dated 12/4/1981 for Rs.195=90 was produced for claiming refund from the Municipality. The concerned clerk suspected it to be a fake receipt on account of difference of appearance in the receipt. He

reported it to the concerned authority, who ordered inquiry into the matter. This receipt was received by the person claiming refund from Road Carrying Corporation and it was forged receipt. On inquiring with Road Carrying Corporation, its employee i.e. accused No.1 informed the inquiring officials that he had received the receipts from Octroi Naka and he also gave atleast 17 receipts showing payment of octroi on behalf of various customers of Road Carrying Corporation. These receipts were differing from the original on account of difference in size of paper used, difference in writing of press line and the number affixed on the receipts. The rubber stamp affixed on the receipts also differed from the original one. The signature of collecting officer also deferred markedly. At the relevant time on behalf of Road Caring Corporation its employee Nilesh Natvarlal Kakkad, accused no.1 was visiting octroinaka for payment of octroi. It is alleged that he himself or in collusion with others had forged receipts, rubber stamp and appropriated octroi amount causing damage to the Bhavnagar Municipality.

3.2 The complaint was registered as C.R. No: I-206/1981 with 'A' Division Police Station of Bhavnagar City. After collecting the evidence for filing chargesheet, the Investigating Officer filed the same in the JMFC Court. The court framed charges against accused for commission of offence

under section 408, 406, 467, 477-A read with section 114 of I.P.Code. The plea of the accused came to be recorded at exhibit no. 51 to 57. The accused denied the charge and claimed to be tried. After completion of recording of evidence of prosecution on 4/1/1993 trial court appears to have recorded further statement of the accused under section 313 of I.P. Code. The trial court after discussing the evidence at length came to the conclusion that the prosecution had not proved its case beyond reasonable doubt and therefore acquitted the accused of the charge of commission of offence under section 408, 406, 467, 477-A read with section 114 of I.P. Code vide its order dated 13/1/1993 which is impugned in the present appeal.

4. Shri. M.A. Patel, learned APP appearing on behalf of the appellant State has submitted that the order of acquittal being erroneous and contrary to the facts on record deserves to be quashed and set aside. Shri. Patel has submitted that looking to the prosecution case and evidence adduced on behalf of the prosecution, it can be said that the guilt on the part of the accused has been brought home by the prosecution and therefore, instead of acquitting, trial court ought to have convicted the accused and inflicted appropriate punishment under the law for committing aforesaid offences. Shri. Patel has submitted that the fake receipts have been

produced on record along with original receipts. The difference between two is apparent on the face of it and therefore the trial court ought to have convicted the accused for commission of offence charged. Shri. Patel has submitted that the trial court has erred in not appreciating the fact that the accused no.1 was in fact discharging duty on behalf of the Road Carrying Corporation (the company) and the company was collecting octroi from the customers and in turn making payment thereof to the Municipality. Therefore there is all the more likelihood that accused no.1 was indulging into such kind of forgery in passing of false receipts with the help of other accused and an amount of Rs.11,000=00 appears to have been misappropriated by using fake receipts and therefore same ought to have been appreciated by the trial court in its true perspective. That the order of trial court is otherwise also misconceived, erroneous and the same deserves to be quashed and set aside.

5. Shri. Lakhani appearing on behalf of accused no.1 and Shri. Ajay Jagirdar for Shri. T.S. Nanavati appearing on behalf of accused no.2 to 4 and 6 & 7 (accused no.5 died puring trial) has submitted that, this being an acquittal appeal unless & until it is demonstrated by the appellant that sustaining of the oder of acquittal would result into miscarriage of

justice no interference is called for in the acquittal order. Shri. Lakhani has taken this Court through records & proceedings of the case and submitted that in fact this being a case of no evidence at all against the accused the prosecution has failed in proving guilt of the accused so as to convict them and punish them for the offence under section 408, 406, 467, 477-A and 114 of I.P. Code. Shri. Lakhani has invited this court's attention to exhibit-50 the charge and submitted that even a cursory reading of the charge and the amended charge under section 319 of the Code, would clearly show that so far as accused no.1 is concerned, same can not be said to have been disclosing commission of any offence against him. Accused no.1 is not an employee of the Municipality. The charge in its entirety would not be sufficient to disclose commission of offence against accused no.1. Shri. Lakhani has thereafter invited this Court's attention to the testimony of the complainant who has been examined as P.W. No. 1 at exhibit-76. This witness though has supported version mentioned in the complaint at exhibit-5, in his cross examination he has at least admitted that the fake receipts were issued from Varthej Octroinaka. He has admitted that the signature on the receipt is not legible. In his cross examination this witness has stated that on their inquiring with Road Carrying Corporation, the transporter, they were

informed by accused no.1 in respect of receipt no. 13695 that whatever goods were carried through Road Carrying Corporation the octroi was paid by them and the receipts in question were issued to him by octroi employees working at Varthej Octroinaka. Malek Dhavalbhai and Jabsa Kalyanbhai were working as octroi clerks. The witness has by and large supported his version in the complaint. He has stated that due to such fake receipts Municipality had suffered loss to the tune of Rs.11,000=00 in total. In his cross examination he has admitted that about 7 transport companies are operating in Bhavnagar which had taken benefit of deposit scheme. He has stated that as per order of Superintendent he had filed the complaint. He has stated that octroi receipts are printed under order of Chief Officer through stores department. He was not aware as to how code numbers are given to the said receipts. He has admitted that tenders are invited for receiving orders for printing receipt books. He said that he was not aware of the numbers of the receipt books. He has said that he does not know as to whether he was authorised to file complaint by Standing Committee through its resolution. He has admitted that complaint was filed after the sanction issued by Incharge Chief Officer Shri. J.T. Karadiya. He has admitted that he did not know which were the serial numbers of receipt books used at Varthej Octroinaka at the relevant

time. He has admitted that the money against which receipts were issued had been deposited in the Municipality. He has admitted that in respect of money collected against the fake receipt no recovery was ordered. He has admitted in his cross examination that police had not inquired with him in respect of hand-writing. He has admitted that accused no.1 had informed him in his testimony and statement that all the receipts were received by him from Varthej octroinaka. In further cross examination on behalf of accused no.2 to 7, this witness admitted that the receipts were issued from Varthej Octroinaka. He has admitted that the goods against which transit pass is issued no octroi is to be collected. He has stated that fake receipt at exhibit-125 shown to him contained mentioning of 'Amrutanjan Bam' and name of party that is Harilal Harjivandas, truck No. GTG- 2079, transit pass No. 57322 dated 25/3/1981 was issued showing some plastic goods. He has admitted that on 2/1/1981 one Mr. P.P. Patel was discharging his duties at Varthej Octroinaka and he has not been named as accused. He said that on 17/4/1981 Shri. P.P. Patel was discharging his duties and none of the accused were discharging duties and one of the fake receipt appears to have been issued on that day. Shri. Lakhani has taken this Court through the so called fake receipts and strenuously urged that none of the fake receipts contained any

legible signature so as to impute any writing to the accused no.1 or for that matter to accused no. 2 to 7. Shri. Lakhani has also invited this Court's attention to the deposition and testimony of the other witnesses and urged that looking to this testimony it can well be said that the prosecution has not established its case beyond doubt so as to bring home guilt on the part of the accused. Shri. Lakhani has submitted that in view of this, the decision of the trial court acquitting the accused deserves to be upheld and appeal deserves to be dismissed.

6. Shri. Lakhani has heavily emphasised upon the fact that the investigation itself has not been conducted in a proper direction and as it appears from the record, the accused no.1 is sought to be made scapegoat for the act and omission on the part of the real culprit if any. Shri. Lakhani has submitted that even hand-writing expert's opinion has not been diligently obtained and this being a patent infirmity it can well he said that the offence alleged against the accused can not be said to have been proved beyond doubt. Shri. Lakhani has relied upon decision of various courts in support of his submission. He has relied upon decision of the Apex Court in case of CHATT RAM Vs. STATE OF HARYANA, reported in AIR 1979 SC. pg. 1890 and submitted that the evidence required for proving

forgery have to be cogent and even if there is expert opinion on hand-writing, the same can not be said to be conclusive proof for bringing home guilt so far as offence of forgery is concerned. Shri. Lakhani has also relied upon decision of SHESH NARAIN V. STATE, reported in Cri.L.J. Pg 1364 and the decision of Lahore Court reported in AIR 1932 Lahore 490 (1)in support of his submission that even expert opinion is not ordinarily be taken as conclusive proof and it requires to be examined in detail. The forgery can not be sustained merely on the evidence of hand-writing expert's opinion. In the instant case as could be seen from the record the expert opinion has been conspicuously absent and therefore it can not be said to be a case proved beyond doubt by the prosecution. Shri. Lakhani has submitted that this being an acquittal appeal even if there is possibility of taking different view than that of the trial court from the records & proceedings, then the same can not be made basis for reversing the findings of the trial court under section 378 of the code. Shri. Lakhani has submitted that in view of the aforesaid facts & circumstances the appeal deserves to be dismissed.

7. This Court has perused records & proceedings of Criminal Case No. 66 of 1983 and heard learned counsels of respective parties at length. The main prosecution evidence could be discussed in

brief as under:

7.1 The prosecution witness No.1 is the complainant who has by and large supported the case of the prosecution. However, as it is noticed herein above he has not been in a position to give any cogent evidence in respect of the actual factom of forgery if at all committed in making fake receipts. It could be said that the evidence can not be said to have been helping the case of forgery so as to connect the accused with commission of offence alleged in the case. Prosecution witness No.2 is the owner of the press and in his testimony he has stated that about seven years ago accused no.1 had visited his press for getting 20 receipt books printed and requested him to give quotation for the same. This witness has made statement before the Court on 4/8/1990 the period “around seven years ago”. On this statement Shri. Lakhani has assailed the credibility of the witness that the incident in question in fact alleged to have occurred way back before 9 ½ years. Shri. Lakhani has also made submission in respect of basic infirmity in the testimony of this witness that the version given by this witness does not seem to be plausible and or believable. This witness has stated before the Court that the investigating officer had brought accused no.1 to his press and asked whether he had visited his press for printing receipt books. Thus there was no test identification parade at all.

Moreover this witness has not stated that actually accused no.1 had got the receipt books printed. The letter which is referred to at exhibit-211 does not seem to be the letter as it is claimed by this witness in the testimony. The witness in his cross examination clearly stated that there was no test identification parade at all. This witness has also admitted in his cross exclamation that investigating officer had threatened him for his involvement in this case, if he declined to give writing at exhibit-211. It is important to note that exhibit-211 does not seem to be the writing issued by this witness. This witness also admitted in his cross examination that he has never printed any fake receipt books for accused no.1.

7.2 This witness's testimony can not be said to be in any way helping the case of the prosecution. This witness has in unequivocal terms admitted in his cross examination that he was coerced to issue writing at exhibit-211 which does not seem to be there on the record. However, assuming there was writing or some incriminating document then the same could not have been said to have been issued of his free volition and therefore this also deserves to be treated as giving serious blow to the case of the prosecution. The prosecution witness no.3 is the person who has been associated with Sridhar Associate Agency where from some of the fake receipt have been recovered during inquiry by employee of the Municipality. This

witness has stated in his testimony which is recorded at exhibit-221 that he did not know accused no.1. However he has stated that the receipt appears to have been issued by Nilesh Kakkad i.e. accused no.1. Now looking to the receipts at exhibit-80, 90, 92, 93, 94, 95, 96, 97 , 98 and 100, it does not bear any legible signature at all. This Court had examined the original record and it appeared that signature was not legible in these receipts. He stated that he is unable to identify as to who has signed those receipts. This witness could not even identify accused no.1 in the court. This witness did not make any statement which can be said to be supporting the case of the prosecution.

7.3 P.W No.4's testimony is in respect of Arvind Agency from whom also fake receipts were recovered. Document at exhibit-123 was shown to him but he could not say that who had written it. He has stated that the officers of the Municipality when came to collect the receipt they had not informed him that this was the fake receipt. Though this witness has stated that octroi amount was being collected by accused no.1. The testimony of this witness also can not be said to have advanced the case of the prosecution any further. The testimony of P.W. no. 5 recorded at exhibit-232 also can not be said to have supported the case of the prosecution. This witness was shown exhibit-115 receipt which is at

page-199 of the paper book which is bearing No. 30125 and which is for Rs.322-05. This witness has stated that, he did not know as to who has prepared the receipt. He says that the memo No. 1944 issued by Road Carrying Corporation appears to have been prepared by accused no.1. But even there also he can not say who has signed the same. He has not seen any day accused no.1 writing or signing. The memo at mark 232-A is not there on the record. Similarly exhibit-116 is another receipt bearing no. 3006 for Rs.92-85. This memo issued by Road Carrying Corporation bearing No. 1961 dated 21/6/1981 was shown to him. That memo was at mark 232-B, that is also not available in the record. The testimony of this witness also can be said to be supporting case of the prosecution only to the extent that the cash memo of Road Carrying Corporation was issued or appears to have been issued by accused no.1. But that itself can not be said to have been sufficient proof for roping accused no.1 and other accused for commission of offence of forgery.

7.4 PW No.6 is Octroi Inspector serving as such at the relevant time whose testimony is recorded at exhibit-238. Exhibit-28 is receipt, and it appears to have been shown to this witness. He has not recognized hand writing. This witness has also not advanced case of the prosecution so as to bring home guilt on the part of the accused for commission of offence of forgery.

7.5 PW No.7 whose testimony is recorded at exhibit-240 is another Octroi Inspector of the Municipality who has stated in respect of apparent difference in the original and so called fake receipts of octroi. But he has stated in his chief examination that the signature of accused no.1 was not recognizable. He has narrated the conducting of inquiry by them before lodging the complaint. He has denied statement that he or other inspector had not taken statement of accused no.1. Even this testimony of PW-7 can not be said to be cogent enough so as to establish nexus of accused with the commission of offence of forgery.

7.6 PW No.8, whose testimony is at exhibit-241 has also not given any cogent evidence so as to bring home guilt on the part of the accused.

7.7 PW No.9, whose testimony is recorded at exhibit-256 appears to have given name of the accused no.1 in respect of his signature, but his testimony is assailed by Shri. Lakhani by drawing this Court's attention to the documents. Though this witness has stated that name Nilesh is shown which is legible but this Court has examined the documents exhibit-90, 92. 93 to 98 and also 103 to 106 wherein it can not be said that any name was legible. This witness has stated that octroi was not collected from goods which had passed through octroinaka and carried by Road Carrying

Corporation. He has stated that his statement was never recorded by employee of the Municipality who had conducted preliminary inquiry. He has admitted in his cross examination that accused no.1 used to collect octroi on their behalf and deliver the receipt which he had received from the octroinaka.

7.8 PW-10, is officer of Road Carrying Corporation . He has stated that the octroi was being paid by this Corporation for all the goods which are carried in the trucks and vehicles of Road Carrying Corporation and thereafter this amount of octroi was being recovered from concerned consignee whose goods had been brought by this Corporation. The testimony of this witness support the prosecution only to the extent of saying that it was accused no.1 who was handling this transaction. But his testimony can not be said to have been establishing connection of accused with commission of forgery as such. This testimony of the investigating officer also deserves to be considered as in the testimony it has come out that there was lame attempt to obtain hand writing expert's opinion but the same can not be obtained for want of original documents.

8. Against this backdrop, the findings of the trial court deserve to be appreciated. The trial court has rightly come to the conclusion that the prosecution can not be said to have established its case beyond reasonable doubt so

as to bring home guilt of the accused. This Court has perused the record, and from the record and proceedings it becomes clear that the order impugned in the present appeal does not call for any interference.

9. This Court is aware that this being an acquittal appeal, even if another view is possible, looking to the records & proceedings, the same can not be made basis for reverting findings of the trial court leading to acquittal of the respondents.

10. In view of the aforesaid discussions, this Court is of the considered view that the judgment & order impugned in the present appeal does not suffer from any infirmity, nor has it resulted in any way in to miscarriage of justice, and therefore, the same does not call for any interference. The appeal, therefore fails and accordingly same is dismissed.

[S.R. BRAHMBHATT, J]

/vgn